

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2120 of 1985

with

SPECIAL CIVIL APPLICATION No 5895 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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CHANDRIKABEN C BHATT

Versus

GOVT OF GUJARAT

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Appearance:

In both SCAs:

MR JD AJMERA for Petitioners

MS PS PARMAR for Respondent No. 1

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15/07/97

ORAL JUDGMENT

#. As in both these petitions, a common question has

arisen, the same are being disposed of by this common order. None of the respondents have filed reply to these Special Civil Applications.

#. The facts of the Special Civil Application No.2120 of 1985:

In this Special Civil Application, there are two petitioners. The petitioner No.1 was appointed as a primary teacher on 20th August 1970 in the respondent No.4-school. Her qualifications were SSC and STC (1963). The petitioner No.1 was treated as SSC trained and was paid salary upto March 1981 in grade of trained teacher. From 1st April 1981, she is treated untrained and she is paid salary of untrained teacher.

The petitioner No.2 was appointed in the respondent No.4-School on 1st July 1977. Her qualifications were also SSC and STC. She was also paid salary in the grade of trained teacher. But from 27th June 1979. she is treated as untrained teacher and she is paid salary of untrained teacher.

The petitioners submitted that they have made a representations to the authorities against the action of respondents treating them untrained teacher. Hence this Special Civil Application before this Court presented on 5th February 1985.

In this Special Civil Application, notice was issued to all respondents on 13.1.86. On 27.1.86, Rule was issued and this petition was ordered to be heard with Special Civil Application No.5895 of 1985. So, this Court has not granted any interim relief in favour of petitioners.

#. Facts of Special Civil Application No.5895 of 1985.

The petitioner, in this Special Civil Application, possessed the qualifications of SSC and TD. She was initially appointed in the year 1969 in New Era Girls Primary School, Baroda. She served that school for about two years. Thereafter she joined respondent No.4-School in the month of July 1971. Till June 1972, she was, as per the averments made, was part time teacher and from June 1972, she has been made a full time primary teacher. The petitioner made a grievance against non payment of pay to her in the grade of trained teacher and ultimately under the order dated 24th February 1984, she has been informed that in view of the Government Resolution of the year 1967, she cannot be treated as a trained teacher. hence this Special Civil Application. In this petition also, Rule was issued on 23.1.86, and interim relief has

not been granted.

#. Heard learned counsel for the parties.

#. The learned counsel for the petitioners contended that respondents have committed serious error in treating the petitioners to be untrained teachers only on the basis that they have no PTC qualification. It has further been contended that the Government Resolution of the year 1967 which makes a distinction in between trained and untrained teachers on the basis of qualifications is arbitrary. Carrying further this contention, the learned counsel for the petitioners contended that the cut off date which has been prescribed as 1.1.67 for considering a primary teacher to be trained or untrained having qualifications of STC or TD, is arbitrary and violative of Articles 14 & 16 of the Constitution of India. Lastly, the learned counsel for the petitioners contend that this matter is squarely covered by decision of this Court in the case of Arvindbhai M Patel v. Government of Gujarat & Ors., in Special Civil Application No.3233 of 1991 decided on 13th August 1996. The learned counsel for the petitioners submitted that these Special Civil Applications may also be disposed of in the same terms in which the aforesaid Special Civil Application has been disposed of by this Court.

#. On the other hand, the learned counsel for the respondents supported the orders impugned in these Special Civil Applications as well as the Government Resolution of the year 1967.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. The Sarela Pay Commission recommended the pay scale of Rs.100-160 and Rs.135-250 as pay scale for untrained and trained teachers respectively. These pay scales were revised to Rs.260-350 and Rs.290-560 on the basis of recommendations of Desai Pay Commission. The Circular of the Government dated 9.1.67 is to be referred here briefly. The candidates with qualifications of SSC and STC or TD were given appointment on the post of primary teachers from time to time. It is not case of the petitioners that the qualifications for the appointment on the post of primary teachers were of SCC with STC or TD. The learned counsel for the petitioners when asked by the Court, is unable to controvert that the qualifications for appointment on the post of primary teacher were of SCC and PTC. So even earlier to 1.1.67

the qualifications for appointment on the post of primary teachers were of SSC and PTC. The qualifications for appointments were not of SSC and STC or TD. The persons who were not having qualifications of SSC and PTC were given appointment and as such at one point of time the Government has decided that those teachers who have been appointed as primary teachers though not having qualifications of SSC and PTC before 1.1.67 be treated as primary teachers for the purpose of giving pay scales of trained teachers, and as such, all primary teachers, appointed before 1.1.67 with qualifications of SSC and STC or TD were treated to be trained teachers and accordingly the pay scale of trained teacher was given to them but it has been decided that now henceforth, i.e. after 1.1.67, the candidates possessing the qualifications of SSC and PTC and appointed as primary teacher shall only be considered as trained teachers and those who have been appointed with qualifications of SSC with STC or TD shall be considered to be untrained teachers. This distinction of trained and untrained teachers was already there and under this Resolution, only those teachers who had already been appointed prior to 1.1.67, have been considered to be trained teachers. The two different pay scales have also been prescribed for trained and untrained primary teachers and the same have been prescribed on the basis of qualifications. It is for the Government to decide what qualifications should be there for appointment on the post of primary teacher and in case the qualification of SSC and PTC has been prescribed as minimum required qualification for appointment on the post of primary teachers, how it can be said to be arbitrary or perverse decision. On the basis of qualifications, certainly different pay scales can be prescribed and in this respect reference may have to decision of Hon'ble Supreme Court in the case of Shyambabu Verma v. Union of India, reported in 1994(2) SCC 521. Though 'primary teacher' is one post and all primary teachers may be discharging same functions, but certainly on the basis of qualifications, two different pay scales could have been prescribed and the decision of the Government to prescribe two different pay scales for two different qualifications, though for the same post, cannot be said to be arbitrary or unreasonable or violative of Articles 14 or 16 of the Constitution of India. Those primary teachers who possessed SSC and PTC were considered to be trained and they have been given pay scale of trained teachers and the primary teachers with qualifications of SSC with STC or TD were considered to be untrained and accordingly were given pay scale prescribed for untrained teachers. Such a decision taken by the respondents cannot be said to be arbitrary.

#. So far as the grievance of the petitioners' counsel that the cut off date of 1.1.67 is arbitrary, it is difficult to accept. Moreover, the petitioners in these petitions have been appointed much after 1.1.67. In Special Civil Application No.2120 of 1985, the petitioners were appointed in 1970 and 1977 respectively and in other petition the petitioner has been appointed in the year 1969. So otherwise also, the petitioners have been appointed much after 1.1.67 and they could not have made any grievance before this Court as their existence in services was much after 1.1.67.

##. As to when choice of a cut off date can be interfered was opined by Holmes, J. in *Louisville Gas & Electric Co. v. Clell Coleman*, reported in 72 L Ed 770 (1927), by stating that if the fixation be "very wide of any reasonable mark", the same can be regarded arbitrary. Their Lordships of the Hon'ble Supreme Court, in the case of *Union of India v. Parameswaran Match Works*, reported in AIR 1974 SC 2349, in para-10 thereof, cited with approval, the aforesaid decision stating that the choice of a date cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. It was further pointed out where a point or line has to be, there is no mathematical or logical way of fixing it precisely, and so, the decision of the legislature or its delegate must be accepted unless it can be said that it is very wide of any reasonable mark. In this context, it would also be useful to state that when a Court is called upon to decide such a matter, mere errors are not subject to correction in exercise of power of judicial review; it is only its palpable arbitrary exercise which can be declared to be void, as stated in *Metropolis Theater Co. v. City of Chicago*, reported in 57 L Ed 730(1912), in which Justice McKenna observed as follows:

"It may seem unjust and oppressive, yet be free from judicial interference. The problems of government are practical ones and may justify, if they do not require, rough accommodations, illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible; the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void ..."

In this respect, reference to another decision of Hon'ble Supreme Court in the case of Sushma Sharma v. State of Rajasthan, reported in AIR 1985 SC 1367, may be usefully made.

##. In the present case, the prescription of 1st January 1967 as a cut off date in the case of primary teachers to be treated as trained or untrained teachers on the basis of qualifications cannot be said to be arbitrary or unreasonable or capricious which violates Article 14 of the Constitution of India. This date has been fixed for the reason that from 1.1.67 onwards only those teachers having qualifications of SSC and PTC were to be treated trained teachers and entitled for the pay scale prescribed for trained teachers. When two pay scales have been prescribed, naturally the respondent-State has to give out who are the persons entitled for which pay scale and whatever was going on earlier, at one point of time has been crystallized once for all. So the respondents have treated those primary teachers appointed earlier to 1.1.67, having qualifications of SSC and STC or TD as trained teachers, and this decision of respondents cannot be said to be arbitrary. Those persons who have been appointed after 1.1.67 cannot claim any parity with the persons who have been appointed earlier to 1.1.67 and in case the untrained primary teachers are not given benefits of the pay scale of trained teachers, as was given to the all, trained and untrained primary teachers appointed earlier to 1.1.67, it cannot be said that any discrimination, much less a hostile discrimination, has been made.

##. In the Special Civil Application No.2120 of 1985, it is true that the petitioners therein were considered to be trained teachers though they were not having qualifications of SSC and PTC, but it was a mistake which came to be corrected lateron. In the case of petitioner No.1, from April 1981, she was treated to be untrained primary teacher and in the case of petitioner No.2, she was treated to be untrained primary teacher from March 1979 and accordingly their pay scales were fixed under the order dated 2.9.78. So whatever error which has been committed earlier, has been rectified. In another Special Civil Application, the petitioner therein was appointed as untrained teacher in the year 1969.

##. Otherwise also, the claim of these petitioners on the ground of discrimination or arbitrariness in the prescription of cut off date in the Government decision

of the year 1967 suffers from delay and latches. The petitioner, in Special Civil Application No.5895 of 1985 was appointed in the year 1969 and this petition has been filed by her in the year 1985. The resolution dated 24th February 1984 is nothing but only recital of Resolution of the year 1967. In another Special Civil Application, the petitioners have come up before this Court after nine years in one case and after seven years in another case. In Special Civil Application No.2120 of 1985, challenge has been made to the Circular of the year 1967 and this challenge is grossly belated. It has been made after more than eighteen years for which there is no explanation.

##. The decision of this Court on which strong reliance has been placed by the learned counsel for the petitioners is of little help to the petitioners in this case. In that case the petitioner was appointed in the year 1969 though he was having the qualification of SSC with teaching diploma, she was given the pay scale of trained teacher. Despite of the letter of Government dated 17th July 1967, the petitioner therein has been given appointment as a trained teacher and when that was sought to be taken away, she has come to this Court and this Court has protected him by grant of interim relief. The petitioner therein, from the year 1969 to 1996 was getting salary in the pay scale of trained teacher, though under interim relief from 1981. In this background, this Court has considered it to be appropriate to give an opportunity to the petitioner therein to file a representation regarding her grievances and the respondents were directed to decide the same taking into consideration the fact that the petitioner was working for all these years, as a trained teacher. Otherwise also, that decision is not on merits but it is on peculiar facts of that case. It is not the case where this Court has, in earlier petition, decided that the cut off date of 1.1.67 is illegal or that the petitioner therein was qualified to be given the pay scale prescribed for primary trained teacher.

##. In the result, both these writ petitions fail and the same are dismissed. Rule discharged. No order as to costs.

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